

III. REMARKS

Applicant has reviewed the current Office Action of mailing date August 23, 2006. Claims 1-25 are pending in this application. By this amendment, claims 1, 3, 4, 10 and 18 have been amended; claims 11 and 19 have been cancelled. These amendments are being made to facilitate early allowance of the presently claimed subject matter. Applicant does not acquiesce in the correctness of the rejections and reserves the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicant reserves the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

In the Office Action, 4 and 18 – 25 are objected to as allegedly being non-compliant with formal requirements. Claims 18 – 25 are rejected under 35 U.S.C. §101 as allegedly being directed to both statutory and non-statutory subject matter. Claims 1, 4-8, 10-11, 18-19 and 21-24 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 6,157,993, hereafter “Lewchuk”, in view of US 6,452,404B1, hereafter “Bereznyi”. Claims 9, 17 and 25 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Lewchuk and Bereznyi in view of US 6,766,422B2, hereafter “Beyda”. Claims 2-3, 12 and 20 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Lewchuk and Bereznyi in view of US6,505,200B1, hereafter “Ims”. Applicant disagrees with the Office’s interpretation of the claimed invention and respectfully submits the following arguments for the Office’s reconsideration.

A. OBJECTION TO CLAIMS 4, 18 – 25

The Office has objected to claims 4, 18 – 25 as allegedly being informal. Applicant has amended claim 4 by replacing the term “cache” with the term “discard” and amended claim 18 by replacing the term “recordable” with the term “storage”. As to claims 19 – 25, the amendment to claim 18 will apply in view of these claims being dependent from claim 18. Accordingly, Applicant respectfully requests that the Office withdraw the objection.

B. REJECTION OF CLAIMS 18 – 25 UNDER 35 U.S.C. §101

With regard to the 35 U.S.C. §101 rejection with respect to claims 18 - 25, Applicant submits that any known type of transmission media facilitates the practical application of the claimed system. The transmission media as set out on page 7 of the original specification, which when incorporated as part of a system in a computer undergoes some form of physical transformation within the computer to facilitate a practical application within the technological arts. MPEP§2106 IV B.2(b). To this extent, the tangibility of a medium is irrelevant to patentability under 35 USC §101 as long as it facilitates the practical application of the system to provide a real world value. As such, Applicant submits that the claimed invention is directed to statutory subject matter. Accordingly, Applicant requests that the rejection be withdrawn.

B. REJECTION OF CLAIMS 1, 4 – 8, 10 – 11, 13 – 16, 18 – 19 and 21 – 24 UNDER 35

U.S.C. §103(a)

With regard to the 35 U.S.C. §103(a) rejection over Lewchuk in view of other cited references, Applicant asserts that all references cited by the Office, considered individually or in

any combination, fail to teach or suggest each and every feature of the claimed invention. For example, with respect to independent claim 1 (and similarly independent claims 10 and 18), Lewchuk, Bereznyi and Ims do not teach or suggest, *inter alia*, “managing a discard queue and a refresh queue concurrently.” As indicated on page 10 of the current Office Action, the Office states that Lewchuk and Bereznyi do not teach “refreshing the needed data objects from the refresh queue”. By this admission, the Office acknowledges that Lewchuk would not be capable of teaching a refresh queue. Without teaching the claimed element of a refresh queue, Lewchuk would not be capable of teaching or suggesting the ability to concurrently manage both a discard queue and a missing refresh queue. Applicant further submits that Ims teaches a method/system that automatically synchronizes an arbitrary replicated data source with a back-end data source, col. 4, line 34 – 37, but does not teach or suggest the concurrent management capabilities between a discard queue and a refresh queue. In view that the references do not teach the claimed elements in the manner as claimed, the Office has not provided factual support for the motivation to modify or combine the references by a person of ordinary skill in the art. To this extent, the Office has not established a *prima facie* case of obviousness. As such, Applicant respectfully requests the Office’s withdrawal of this rejection.

In addition, as noted by the Office on page 5 and 6 of the current Office Action, Lewchuk does not teach or suggest, *inter alia*, “...assigning discard rules to the data objects on a class basis ...”, claim 1, and “...discarding the particular data objects from the cache to a discard queue based on the discard rules”, claim 4. The Office cites the disclosure in col. 29, line 58 – col. 30, line 3 of Bereznyi as a cure to the deficiency in Lewchuk in support of the rejection. However, Applicant submits that Bereznyi does not teach, *inter alia*, “...assigning discard rules

on a class basis...". Specifically, Berezhnyi discloses a system that determines "...whether the cache contains ...any items that are past due on the time or frequency parameters specified for each item." Col. 29, lines 59 – 62. In contrast to the claimed invention, Berezhnyi's system is not class specific but item specific in the storing away of "[a]ll items that are past a specific expiration time/date ... in a 'Delete list'". Col. 29, line 65 – 66. The claimed invention provides for the data objects to be "...registered according to classes..." before being cached. Support for this is found in [0027] of the specification. As such, Berezhnyi does not teach or suggest this claimed feature and hence does not cure the deficiency in Lewchuk. Accordingly, Applicant respectfully requests that the Office withdraw the rejection.

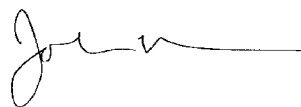
Furthermore, Applicant submits that all dependant claims are allowable based on their own distinct features. However, for brevity, Applicant will forego addressing each of these rejections individually, but reserves the right to do so should it become necessary. Accordingly, Applicant respectfully requests that the Office withdraw its rejection.

IV. CONCLUSION

In addition to the above arguments, Applicant submits that each of the pending claims is patentable for one or more additional unique features. To this extent, Applicant does not acquiesce to the Office's interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicant does not acquiesce to the Office's combinations and modifications of the various references or the motives cited for such combinations and modifications. These features and the appropriateness of the Office's combinations and modifications have not been separately addressed herein for brevity. However, Applicant reserves the right to present such arguments in a later response should one be necessary.

In light of the above, Applicant respectfully submits that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the number listed below.

Respectfully submitted,



John A. Merecki
Reg. No. 35,812

Date: November 21, 2006

Hoffman, Warnick & D'Alessandro LLC
75 State Street, 14th Floor
Albany, New York 12207
(518) 449-0044
(518) 449-0047 (fax)
JAM/TC